



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 28792601

Date: JULY 25, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a cancer biology researcher, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned a doctorate in biotechnology in his native India in 2009, and subsequently received postdoctoral training in one- to two-year positions at various institutions in India and the United States. Most recently, in May 2022, the Petitioner began working as a research scientist at [REDACTED] Texas. He left the United States shortly after the petition was denied in April 2023.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to have satisfied three of these criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director concluded that the Petitioner met only one criterion, pertaining to his authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets the other two claimed criteria.

Upon review of the record, we conclude that the Petitioner has satisfied three initial criteria. We will discuss the remaining two claimed criteria below.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner stated that his peer review of manuscripts for scholarly journals satisfies the requirements of this criterion. The Director acknowledged the Petitioner's submission of "email correspondence thanking the petitioner for his peer review of articles," but the Director concluded that "the record fails to sufficiently demonstrate that the petitioner was, in fact, invited or otherwise appointed in an official capacity, to judge the work of others."

On appeal, the Petitioner asserts that the Director did not adequately explain how the Petitioner's evidence is insufficient. We agree with the Petitioner that the evidence of record is sufficient to meet the regulatory requirements. The *USCIS Policy Manual* specifies that "[p]eer reviewing for a scholarly journal"

qualifies as judging the work of others, as long as the petitioner submits “proof that the review was actually completed.” *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>. The Petitioner has submitted evidence to that effect, in the form of email messages both soliciting the Petitioner’s involvement and, later, thanking him for submitting completed reviews.

Whether a petitioner’s involvement in peer review also indicates sustained national or international acclaim is a separate question, to be addressed in the final merits determination on remand.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

Under this criterion, the Petitioner submitted several letters and documentation of citations of his published work.

The submitted letters are not wholly persuasive by themselves. Detailed letters from experts in the field explaining the nature and significance of the person’s contribution may provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance. Submitted letters should specifically describe the person’s contribution and its significance to the field and should also set forth the basis of the writer’s knowledge and expertise. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

Here, researchers at various universities state that the Petitioner’s work is important to cancer research, but while the letters *summarize* some of the Petitioner’s published work, they do so in highly technical language that sheds little light on its major significance. Establishing that a particular article or research finding is *useful* is not the same as establishing its major significance in the field.

But the Petitioner has not relied solely on such letters. Documentation that a person’s published work has been highly cited relative to others’ work in that field may be probative of the significance of the person’s contributions to the field of endeavor. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1). Here, the Petitioner submitted a Google Scholar printout showing over 1,100 citations of his published work, with three articles cited more than 100 times each over a span of seven to fourteen years.

The Petitioner also submitted statistics which appear to show that some of his most-cited articles are in the uppermost percentiles. There is some degree of ambiguity in the evidence, because the Petitioner used Clarivate Analytics percentiles for the category of “Clinical Medicine,” but the submitted journal rankings from Google Scholar are in other categories, mostly “Life Sciences & Earth Sciences,” that have higher baseline citation rates. The Petitioner did not establish that Clarivate Analytics considers his articles, or the journals that carried them, to be in the category of “Clinical Medicine.”

Nevertheless, on balance, the evidence cumulatively appears to be sufficient to meet the criterion’s requirements, and we therefore withdraw the Director’s contrary determination.

Because the Petitioner submitted the required evidence to meet three initial criteria, the next step is to evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, whose achievements have been recognized in the field through extensive documentation. A final

merits determination involves analyzing an individual's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

In this proceeding, the Director did not undertake a final merits determination, and therefore there are no related conclusions for us to review. Therefore, we will remand the matter so that the Director can undertake in the first instance a final merits determination. Such a determination is based on the entire record. For example, an individual may at certain points be involved in highly significant research, but not attain the individual acclaim that would place the individual in the small percentage at the top of the field.

Objectively meeting the regulatory criteria in the first step alone does not establish that the person in fact meets the requirements for classification as a person with extraordinary ability. For example:

- Participating in the judging of the work of others in the same or an allied field of specialization alone, regardless of the circumstances, should satisfy the regulatory criteria in the first step of the analysis. However, the second step requires the officer to evaluate the person's participation to determine whether it was indicative of the person being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim.
- Publishing scholarly articles in professional or major trade publications or other major media alone, regardless of the caliber, should satisfy the regulatory criteria in the first step of the analysis. However, the second step requires the officer to evaluate the person's publications to determine whether they were indicative of the person being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim.

See generally 6 USCIS Policy Manual, supra, at F.2(B)(1).

The portion of the *USCIS Policy Manual* dealing with final merits determinations states that we should give some weight to publication of a person's articles in "particularly highly-ranked journals," but another consideration is whether "the person is the most significant contributor to the published article, a senior author, or the sole author of the article." *See id.* at F.2(B)(2). Regarding citation totals, the *USCIS Policy Manual* states:

The petitioner [may] provide[] evidence demonstrating that the total rate of citations to the person's body of published work is high relative to others in the field, such as the person has a high h-index for the field. Depending on the field and the comparative data the petitioner provides, such evidence may indicate a person's high overall standing for the purpose of demonstrating that the person is among the small percentage at the top of the field.

Id. The Petitioner submitted a Google Scholar printout showing an h-index of 17 at the time of filing, meaning that 17 of his articles had each been cited 17 or more times. The Director should consider whether the Petitioner submitted adequate evidence to establish that his h-index is high relative to others in the field.

Letters of support should be corroborated by documentary evidence in the record. The letters should explain in specific terms why the witnesses believe a petitioner to be of the caliber of a person with extraordinary ability. Letters that merely make general and expansive statements regarding a petitioner and their accomplishments are generally not persuasive. *See id.* at F.2(B)(3).

Regarding all these issues, the burden of proof remains on the Petitioner to adequately support his claims. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

III. CONCLUSION

By a preponderance of the evidence, the Petitioner has satisfied three initial evidentiary criteria. We will remand the matter to the Director for a final merits determination.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.